

myStateTaxOffice

A Washington National Tax Services (WNTS)
Publication

May 18, 2012

House passes state income tax simplification measure

Authored by: Bryan Mayster



Executive Summary

Every day in every state in America, people travel outside their home state for work, noted Congressman Howard Coble (R- NC) as the House of Representatives prepared to vote on HR 1864, The Mobile Workforce Simplification Act. These individuals, as well as their employers - from large multinational companies to small family businesses - are currently subject to significant burdens trying to comply with the patchwork of state rules as to when personal income tax liability attaches when an employee travels to a non-resident state and when an employer is required to withhold on these employees' wages.

The Mobile Workforce legislation, which passed the House on May 15 by voice vote, establishes a uniform, easily administered national standard for imposition of an income tax on non-residents working in a state. The legislation provides that only the state of an employee's residence, or the state within which the employee is present performing duties for more than 30 days during a calendar year, may subject wages earned by an employee to income tax. On May 16, HR 1864 was received in the Senate and referred to the Finance Committee.

Did You Know?

Under the legislation, in addition to the state of an employee's residence, other states may tax an employee's income if the employee is present and performing duties for more than 30 days during the calendar year in which the income is earned. Once the



30-day threshold is passed, income tax withholding and reporting obligations for the employer would apply to all wages or other remuneration earned as of the commencement date of duties in the non-resident state for that year (thus, the non-resident state in such cases would be able to tax wages paid during the 30-day period).

An employee will be considered present and performing duties within a state for any day in which she performs more of her employment duties in the non-resident state than in the resident state for such day. The legislation provides a default rule whereby if the employee performs employment duties in one non-resident state during one day, such employee will be considered to have performed more of her duties in the non-resident state than in the resident state for such day. Transit time is not considered in determining the location of the employee's employment duties.

The legislation provides that employers may rely on the employee's annual determination of the time expected to be spent in the states in which the employee will perform duties, absent actual knowledge of employee fraud or collusion to evade tax. Records maintained by an employer recording the location of the employee for other business purposes may not preclude the employer's ability to rely on such an employee determination. However, where the employer, at its sole discretion, maintains a time and attendance system that tracks where the employee performs duties on a daily basis, and the system is designed to allow the employer to allocate wages for income tax purposes among all states in which the employee works, the data from such system must be used.

Professional athletes, professional entertainers, and certain public figures are excluded from the term "employee," and thus are not covered by the legislation. The term "employee" is defined by the state in which the duties are performed.

The legislation would be effective on January 1 of the second year that begins after the date of enactment. Thus, if the legislation is enacted into law in 2012, it would take effect on January 1, 2014.

Observations

The primary House sponsor of this bipartisan legislation is Congressman Howard Coble (R-NC) and the primary co-sponsor is Congressman Hank Johnson (D-GA). Congressman Johnson, a sponsor of this legislation since the 110th Congress, noted that when he initially started working on this matter, the withholding threshold was 60 days. However, in response to the concerns raised by the Federation of Tax Administrators, he sought a compromise and lowered the standard to 30 days. While he recognized that the FTA may still have some concerns, this bill addresses the "bulk of their concerns" which "certainly have not been ignored."

Mr. Johnson continued by saying that "[F]or the vast majority of states, this bill carries a minimal or no revenue impact" but will "end up saving states the administrative costs of processing and remitting thousands of small returns from non-residents." Mr. Coble agreed, stating that the money employers and employees "would have spent hiring accountants and tax lawyers can then be spent on creating meaningful jobs and growing the economy."

For more information, please contact:

Don Longano (202) 414-1647 don.longano@us.pwc.com

Bryan Mayster (202) 414-4498 bryan.mayster@us.pwc.com

For more information on PricewaterhouseCoopers' state legislative tracking service, [click here](#).

This document is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

SOLICITATION

© 2012 PricewaterhouseCoopers LLP. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers LLP, a Delaware limited liability partnership, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.